

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**GREGORY A. NASH,**

**Plaintiff,**

**Civil No. \_\_\_\_\_  
Jury Trial Demanded**

**v.**

**BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF CATRON, NEW  
MEXICO, a political subdivision of the State  
of New Mexico,**

**Defendant.**

**COMPLAINT FOR DAMAGES FOR VIOLATION OF 5<sup>th</sup> and 14<sup>th</sup> AMENDMENTS TO  
THE UNITED STATES CONSTITUTION**

Comes now GREGORY A. NASH, by and through his attorney, Steven K. Sanders (Steven K. Sanders & Associates, LLC) and asserts the following claims for taking his property without compensation in violation of due process under the 14<sup>th</sup> Amendment to the United States Constitution and the right to just compensation as required by the Taking Clause<sup>1</sup> of the 5<sup>th</sup> Amendment to the United States Constitution as incorporated by reference and made applicable to state action through the 14<sup>th</sup> Amendment to the United States Constitution.

**Parties, Jurisdiction, Venue**

1. Plaintiff GREGORY A. NASH is an individual who resides in Curry County, New Mexico. Plaintiff is the owner of certain real estate situated in Catron County, New Mexico<sup>2</sup>. The

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<sup>1</sup> The 5<sup>th</sup> Amendment Taking Clause reads, “[N]or shall private property be taken for public use, without just compensation.”

<sup>2</sup> See N.M.S.A. 4.2.1.

taking of this property by Defendant, without just compensation as required by the United States Constitution, and the 5<sup>th</sup> and 14<sup>th</sup> Amendments thereof is the subject of this suit.<sup>3</sup>

2. Defendant BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CATRON, NEW MEXICO, is a political subdivision of the State of New Mexico, with the power of eminent domain which is located and doing business in the County of Catron, New Mexico.

3. Defendant BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CATRON, NEW MEXICO (herein “Catron County”) is not a state agency or institution; it is a political subdivision of the state of New Mexico, created under a general or special act, that receives and expends public money from whatever source derived. See NM Stat. 4-38-17.

4 All actions relevant to this case took place in the County of Catron, New Mexico.

5. This court has subject matter jurisdiction over all issues and parties to this case. According to 28 U.S.C. Section 1331, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” This action arises under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution. According to *Chicago B & Q Railroad Co., v. Chicago*, 166 U.S. 226 (1897) the taking clause of the 5<sup>th</sup> Amendment applies to the states by way of the 14<sup>th</sup> Amendment due process clause.

6. The appropriate venue for this case is in this Court.

**Claim: Violation of 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution**

7. Plaintiff incorporates the allegations in paragraphs one through six.

8. This claim arises under the United States Constitution, particularly under the provisions of the 5<sup>th</sup> and 14<sup>th</sup> Amendment to the United States Constitution. This is a claim for damages for

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<sup>3</sup> See *Knick v. Township of Scott, PA*, 139 S.Ct. 2162, 204 L.Ed.2d 558 (2019)

violation of said Amendments with remedies provided by the Civil Rights Act, Title 42 U.S.C. § 1983, with additional remedies provided by 42 U.S.C. § 1988. Plaintiff seeks damages, attorneys' fees, expenses and costs against Defendant.

9. Plaintiff is the owner in fee simple of certain property located in Catron County, New Mexico, described as follows:

A certain tract of land situated within Section 12, Township 7 South, Range 19 West of the NMPM , Village of Reserve, Catron County, New Mexico being more fully described as follows:

Beginning at the northwest corner of the herein described tract, being a common corner with the northeast corner of lot number eight (8) in Block number one (1), of the Reserve Townsite Plat, running thence S.74 degrees, 10' 4" E., a distance of 43.98 feet to the northeast corner; thence S. 09 degrees, 13' 52" W a distance of 11.91 feet to an angle point; thence S 05 degree 21'56" E, a distance of 132.08 feet to the southeast corner; thence N 73 degrees, 54' 58" W a distance of 91.38 feet to the southwest corner; thence N 15 degrees 05'43" East, a distance of 134.59 feet to the northwest corner and place of beginning and containing 0.2047 acres more or less,

wit said property being located in Reserve, New Mexico. The property is adjacent to 100 Main, Reserve, Catron County, New Mexico 87830.

10. Plaintiff's parents purchased the property in 1955 and held it until it was transferred to Plaintiff in 2022.

11. However, in 1968 the property or a portion thereof was apparently included in a deed from Pablo Romero and Ester Romero to the Catron County Commissioners. Defendant may claim title through this deed to all or a portion of the described property.

12. Defendant Catron County is a "person" within the meaning of 42 U.S.C. 1983.

13. Defendant Catron County has taken Plaintiff's property without just compensation in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution.

14. Defendant's employees use Plaintiff's property without his consent and continuously encroach upon Plaintiff's property. The encroachment continues to the day of filing

this action. The encroachment itself is a taking of property without due process of law in violation of the 14<sup>th</sup> Amendment to the United States Constitution and without just compensation in violation of the 5<sup>th</sup> Amendment to the United States Constitution.

15. Plaintiff has attempted to remedy this matter before the Board of County Commissioners of the County of Catron and by way of a quiet title action and/or civil rights action in the District Courts of the State of New Mexico to no avail. In each instance, the County claims and the New Mexico courts grant sovereign immunity from suit. See e.g., *Nash v. The Board of County Commissioners of the County of Catron*, D. 728 CV- 2021-00033 and *Nash v. Board of County Commissioners of the County of Catron*, 2021-NMSC-005 (2021), D-728-CV-2017-00018.

16. The County has told Plaintiff that it will condemn the property, but no action has been filed to do so. Instead, the County has filed an action to enjoin Plaintiff's use of his own land, thus effectuating a taking of Plaintiff's property without just compensation.

17. An injunction was issued March 1, 2023 at the County's request forbidding Plaintiff from enjoying his own property. No compensation was paid to Plaintiff. See e.g., *Board of County Commissioners of the County of Catron v. Gregory Nash*, No. D. 728 CV-2023-0002.

18. At all times relevant hereto, the acts of this Defendant, complained of herein, were done under the colored pretense of statutes, ordinances, regulations, customs and usage's of the State of New Mexico, and the Defendant Catron County.

19. As aa proximate result of Defendant's conduct in encroaching on Plaintiff's property and by taking Plaintiff's property without just compensation, Plaintiff has been damaged by the loss of use and the value of the property.

20. Plaintiff has suffered emotional distress and loss of enjoyment of the use of his property.

21. As a result of Defendants' conduct, Plaintiff has had to hire an attorney and has incurred legal fees to which he is entitled under 42 U.S.C. Section 1988.

WHEREFORE, premises considered, Plaintiff prays that this Court award compensatory and special damages for the loss of use and the taking of his property, for emotional distress and loss of enjoyment of his property, pre and post judgment interest and attorney fees and such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

**Plaintiff demands a trial by jury of all issues triable of right by a jury.**

Respectfully submitted.

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